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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,227	06/26/2003	Yasuhiro Nakahara	500.42883X00	3755
24956	7590	08/15/2007	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			AVELLINO, JOSEPH E	
			ART UNIT	PAPER NUMBER
			2143	
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			08/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/606,227 <i>(Signature)</i>	NAKAHARA, YASUHIRO
	<b>Examiner</b> Joseph E. Avellino	<b>Art Unit</b> 2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 June 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5 and 6 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5 and 6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11/3/03 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1, 2, 5, and 6 are presented for examination; claims 1, 2, and 6 independent.

#### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d).

#### ***Claim Rejections - 35 USC § 101***

3. The rejection under this statute has been withdrawn in light of the amendments.

#### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mummert et al. (USPN 6,907,607) (hereinafter Mummert) in view of Abu El Ata (USPN 7,031,901) (hereinafter Abu)

5. Referring to claim 1, Mummert discloses a method of deriving a configuration of a system of a computer in a configuration deriving system which includes a plurality of computers (i.e. processing systems) to be performance guaranteed (i.e. above T), a

supervisory server (i.e. administrative processor 201) and a configuration deriving apparatus (i.e. move systems below T to above T if possible) comprising:

predicting a response time from issuing of a processing request to end of its processing based on an occurrence frequency of processing requests to the system of the computer systems and computer system configurations (i.e. projecting capacity of computer resources for a plurality of processing systems, thereby determining the life expectancy of the configuration with the particular loads) (e.g. abstract; Figure 7, ref. 704; col. 5, line 66 to col. 6, line 10);

calculating costs of the system configurations based on the system configurations (i.e. recalculate life expectancy after configurations have been updated) (col. 7, lines 32-39);

deriving a configuration of the system (i.e. an inherent feature in order to move systems from below T to above T, it must be able to derive a configuration which will be able to move the system to above T) (col. 7, lines 40-67); and

changing the system based on the configuration step (i.e. move systems from below T to above T) (col. 7, lines 40-67).

Mummert does not specifically disclose the occurrence frequency is obtained from the supervisory server, receiving a response time, calculating a probability of existence of processing whose response time is equal to or longer than A with respect to processing of all requests, deriving a configuration of a cheapest system from among configurations having a probability equal to or lower than B, and changing the configuration based on the deriving step. In analogous art, Abu discloses another

system configuration deriving system which discloses predicting a response time for the particular requests, if the metrics indicate that the solution can handle the expected throughput (i.e. probability lower than B, since the system can handle the expected throughput within the response time), and based on the projection, the cost to deploy the business solution, in a configuration with acceptable response time and throughput, is used to define the business case for the proposed solution (col. 9, lines 20-49). It would have been obvious to one of ordinary skill in the art to combine the teaching of Mummer with Abu in order to utilize the predictive modeling of Abu with the reconfiguration of Mummer in order to guarantee the deployment of complex business information systems within time and budget constraints having required performance and operating costs as supported by Abu (col. 1, lines 45-52).

6. Claims 2 and 6 are rejected for similar reasons as stated above. Furthermore there is not patentable difference between claims with different representative characters for probabilities and values. Furthermore Mummert discloses dynamically changing the system configuration (i.e. automatically move systems below the minimum threshold T to above T if possible) (col. 7, lines 40-45).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mummert-Abu in view of Cooper (USPN 6,823,516).

7. Mummert-Abu discloses the invention substantively as described in the claims above. Mummert-Abu does not specifically disclose starting or stopping a system

element. In analogous art, cooper discloses starting and stopping configuration elements based on performance states (e.g. abstract). It would have been obvious to one of ordinary skill in the art to combine the teaching of Cooper with Mummert-Abu, since Mummert discloses that the only way to increase life expectancy when all the systems are below T is to add capacity (Mummert: col. 7, lines 46-47). Therefore one of ordinary skill in the art would find it useful to incorporate Cooper's processor performance states into the system of Mummert-Abu, thereby allowing systems to operate at a plurality of performance states (including on/off) to provide an efficient cost-effective method of configuring a system.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 2, 5, and 6 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2143

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Joseph E. Avellino, Examiner  
July 20, 2007